

## REMARKS

Applicant respectfully requests reconsideration of the present application in view of the reasons that follow. Claims 1-8 will be pending the present application upon entry of this Reply.

### Claim Rejections – 35 U.S.C. § 103(a)

Claims 1-5 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Quist (U.S. Patent No. 4,410,610) in view of Adams (U.S. Patent No. 4,859,547). Claims 4 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Quist in view of Adams and further in view of McHenry (U.S. Patent No. 5,273,845). Claims 1 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Quist in view of Adams and further in view of Dougherty (U.S. Patent No. 4,775,604). These rejections should be withdrawn, because the cited references fail to disclose, teach, or suggest the claimed invention.

For example, Quist and Adams, alone or in any proper combination with any of the other cited references, fail to disclose, teach, or suggest a “rechargeable battery having a cover” where, among other elements, “a first section of the pole shank is electrically conductively connected in a gas-tight and liquid-tight manner to the inner surface of the pole sleeve [and] a sliding element [is] provided between a second section of the pole shank and the inner surface of the pole sleeve . . . wherein the diameter of the first section is smaller than the diameter of the second section,” as recited in independent claim 1 (as amended).

Quist is directed to a “pole bushing for batteries” and teaches using a post that contacts both a metal sleeve (1) and a sealing material (2) while maintaining a constant diameter (see Fig. 3), rather than utilizing a pole shank having a first section having a smaller diameter than a second section, as required by independent claim 1.

Adams is directed to a “battery terminal” and teaches the use of a constant-diameter “post means 20,” rather than a pole shank having a first section having a smaller diameter than a second section, as required by independent claim 1.

The Examiner has cited to no teaching in the prior art of a “rechargeable battery having a cover” where, among other elements, “a first section of the pole shank is electrically conductively connected in a gas-tight and liquid-tight manner to the inner surface of the pole sleeve [and] a sliding element [is] provided between a second section of the pole shank and the inner surface of the pole sleeve . . . wherein the diameter of the first section is smaller than the diameter of the second section.” The Applicant submits that the only evidence of a teaching of such a feature is contained in the present application. Of course, any reliance on the present application would constitute impermissible hindsight.

As acknowledged by the Examiner, “Quist . . . does not disclose wherein the diameter of the first section is smaller than the diameter of the second section.” The Examiner nevertheless stated:

It would have been an obvious matter of design choice to modify the first and second sections of the pole shank in order to provide a tighter seal, since such a modification would have involved a mere change in the size of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Applicant respectfully disagrees. As stated in the MPEP, a change in shape may be “a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration [] was significant.” MPEP § 2144.04(IV)(B) (citing *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)). Applicant submits that the configuration of the pole shank as claimed is significant. For example, paragraphs [0013]-[0014] of the present application state that the “sliding element is provided between a second section of the pole shank and the inner casing of the pole sleeve” and that “this ensures that the inner wall of the pole sleeve slides with little friction over the pole shank.” Paragraph [0028] goes on to explain that the diameter of the first section “is chosen such that an intermediate space 15 is formed around the [first section and] filled with lead solder . . . to produce a gas-tight and liquid-tight closure.” Paragraph [0016] furthermore explains that the configuration of the pole shank helps to prevent damage to the pole shank and/or pole sleeve during assembly: “One advantageous feature of such a configuration [is] that such a configuration largely avoids damage to the pole shank and/or to the pole sleeve

when the pole sleeve is being pushed onto the pole shank.” Accordingly, Applicant submits that the configuration of the pole shank as claimed in the present application is significant and would not have been obvious to one of ordinary skill in the art at the time of the invention.

Accordingly, the Applicant respectfully requests the withdrawal of the rejection of Claim 1, since at least one element of Claim 1 is not disclosed, taught, or suggested by the combination of Quist and Adams, alone or in combination with any of the other cited references. Claims 2-8 depend variously from Claim 1 and are allowable therewith, for at least the reasons set forth above, without regard to the further patentable limitations set forth in such claims. Reconsideration and withdrawal of the rejections of Claims 1-8 is respectfully requested.

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Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

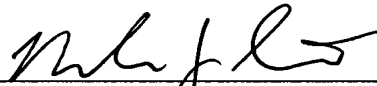
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 10/16/2007

By 

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